

## § 712.4

accepted auditing standards” (GAAS); and

(3) Provide NCUA and its representatives with complete access to any books and records of the CUSO and the ability to review CUSO internal controls, as deemed necessary by NCUA in carrying out its responsibilities under the Act.

(e) *Other laws.* A CUSO must comply with applicable Federal, state and local laws.

[63 FR 10756, Mar. 5, 1998, as amended at 64 FR 33187, June 22, 1999; 64 FR 57365, Oct. 25, 1999; 66 FR 40578, Aug. 3, 2001]

### § 712.4 What must an FCU and a CUSO do to maintain separate corporate identities?

(a) *Corporate separateness.* An FCU and a CUSO must be operated in a manner that demonstrates to the public the separate corporate existence of the FCU and the CUSO. Good business practices dictate that each must operate so that:

(1) Its respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of its separate corporate procedures;

(3) Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise;

(5) The FCU does not dominate the CUSO to the extent that the CUSO is treated as a department of the FCU; and

(6) Unless the FCU has guaranteed a loan obtained by the CUSO, all borrowings by the CUSO indicate that the FCU is not liable.

(b) *Legal opinion.* Prior to an FCU investing in a CUSO, the FCU must obtain written legal advice as to whether the CUSO is established in a manner that will limit potential exposure of the FCU to no more than the loss of funds invested in, or lent to, the CUSO. In addition, if a CUSO in which an FCU has an investment plans to change its structure under § 712.3(a), an FCU must also obtain prior, written legal advice that the CUSO will remain established in a manner that will limit potential exposure of the FCU to no more than

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the loss of funds invested in, or loaned to, the CUSO. The legal advice must address factors that have led courts to “pierce the corporate veil” such as inadequate capitalization, lack of separate corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records. The legal advice may be provided by independent legal counsel of the investing FCU or the CUSO.

### § 712.5 What activities and services are preapproved for CUSOs?

NCUA may at any time, based upon supervisory, legal, or safety and soundness reasons, limit any CUSO activities or services, or refuse to permit any CUSO activities or services. Otherwise, an FCU may invest in, loan to, and/or contract with only those CUSOs that are sufficiently bonded or insured for their specific operations and engaged in the preapproved activities and services related to the routine daily operations of credit unions. The specific activities listed within each preapproved category are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list.

#### (a) *Checking and currency services:*

(1) Check cashing;

(2) Coin and currency services; and

(3) Money order, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coins services;

#### (b) *Clerical, professional and management services:*

(1) Accounting services;

(2) Courier services;

(3) Credit analysis;

(4) Facsimile transmissions and copying services;

(5) Internal audits for credit unions;

(6) Locator services;

(7) Management and personnel training and support;

(8) Marketing services;

(9) Research services; and

(10) Supervisory committee audits;

(c) *Business loan origination;*

(d) *Consumer mortgage loan origination;*

(e) *Electronic transaction services:*

(1) Automated teller machine (ATM) services;

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- (2) Credit card and debit card services;
- (3) Data processing;
- (4) Electronic fund transfer (EFT) services;
- (5) Electronic income tax filing;
- (6) Payment item processing;
- (7) Wire transfer services; and
- (8) Cyber financial services;
- (f) *Financial counseling services:*
  - (1) Developing and administering Individual Retirement Accounts (IRA), Keogh, deferred compensation, and other personnel benefit plans;
  - (2) Estate planning;
  - (3) Financial planning and counseling;
  - (4) Income tax preparation;
  - (5) Investment counseling; and
  - (6) Retirement counseling;
- (g) *Fixed asset services:*
  - (1) Management, development, sale, or lease of fixed assets; and
  - (2) Sale, lease, or servicing of computer hardware or software;
- (h) *Insurance brokerage or agency:*
  - (1) Agency for sale of insurance;
  - (2) Provision of vehicle warranty programs; and
  - (3) Provision of group purchasing programs;
- (i) *Leasing:*
  - (1) Personal property; and
  - (2) Real estate leasing of excess CUSO property;
- (j) *Loan support services:*
  - (1) Debt collection services;
  - (2) Loan processing, servicing, and sales; and
  - (3) Sale of repossessed collateral;
- (k) *Record retention, security and disaster recovery services:*
  - (1) Alarm-monitoring and other security services;
  - (2) Disaster recovery services;
  - (3) Microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services;
  - (4) Provision of forms and supplies; and
  - (5) Record retention and storage;
- (l) *Securities brokerage services;*
- (m) *Shared credit union branch (service center) operations:*
  - (n) *Student loan origination;*
  - (o) *Travel agency services; and*
  - (p) *Trust and trust-related services:*
    - (1) Acting as administrator for pre-paid legal service plans;

- (2) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; and

- (3) Trust services.

- (q) *Real estate brokerage services.*

(r) *CUSO investments in non-CUSO service providers:* In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

[63 FR 10756, Mar. 5, 1998, as amended at 64 FR 33187, June 22, 1999; 64 FR 66361, Nov. 26, 1999; 66 FR 40578, Aug. 3, 2001; 68 FR 56551, Oct. 1, 2003]

### §712.6 What activities and services are prohibited for CUSOs?

*General.* CUSOs must not acquire control of, either directly or indirectly, another depository financial institution, nor invest in shares, stocks, or obligations of an insurance company, trade association, liquidity facility or similar organization, corporation, or association.

[63 FR 10756, Mar. 5, 1998, as amended at 64 FR 66361, Nov. 26, 1999]

### §712.7 What must an FCU do to add activities or services that are not preapproved?

In order for an FCU to invest in and/or loan to a CUSO that offers an unpreapproved activity or service, the FCU must first receive NCUA Board approval. The request for NCUA Board approval of an unpreapproved activity or service must include a full explanation and complete documentation of the activity or service and how that activity or service is associated with routine credit union operations. The request must be submitted jointly to your Regional Office and to the Secretary of the Board. The request will be treated as a petition to amend §712.5 and NCUA will request public comment or otherwise act on the petition within 60 days after receipt. Before you engage in the petition process, you should seek an advisory opinion from NCUA's Office of General Counsel as to whether a proposed activity is already covered by